

Message Text

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ORIGIN DLOS-06

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DRAFTED BY D/LOS:GEORGE TAFT:AFR
APPROVED BY S/AL:AMBASSADOR LEARSON
L/OES:BOXMAN
D/LOS:AGJAMES
EA/IMS:MR.INGRAHAM
EUR/NE:MR. SHUMATE
DOD:MR. STUART FRENCH

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O 062338Z JAN 77
FM SECSTATE WASHDC
TO AMEMBASSY LONDON IMMEDIATE

C O N F I D E N T I A L STATE 003108

E.O. 11652: XGDS

TAGS: PLOS

SUBJECT:LOS: U.K. VISIT TO MALAYSIA REGARDING STRAITS

1. EMBASSY IS REQUESTED TO PRESENT FOLLOWING QTE AS PIECE
OF PAPER UNQTE TO AMBASSADOR LOGAN, HEAD OF U.K. LOSDEL,
EARLY 7 JANUARY. A COPY IS BEING DELIVERED TO U.K.
EMBASSY, WASHINGTON, TODAY. QTE WE HAVE REVIEWED THE U.K.
DRAFT PAPER, QTE UNLOSC: STRAITS, MALAYSIAN AMENDMENTS
TO RSNT (II) 33-41, UNQTE WHICH WE RECEIVED ON DECEMBER
21, 1976, AND HAVE THE FOLLOWING GENERAL COMMENTS:

1) THE GROUP OF FIVE AGREED AT ITS RECENT MEETING IN
PARIS THAT THERE SHOULD BE NO SUBSTANTIVE CHANGES TO THE
STRAITS ARTICLES AND THAT THE POSSIBILITY OF COSMETIC
CHANGES TO THOSE ARTICLES WOULD BE EXPLORED BY EACH DELE-
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GATION BUT WOULD NOT BE PRESENTED TO OTHER STATES UNLESS
THOSE CHANGES WERE AGREED TO BY ALL MEMBERS OF THE GROUP
OF FIVE. THE JAPANESE DELEGATION WAS PARTICULARLY CON-
CERNED THAT THERE BE NO CHANGES TO THE STRAITS ARTICLES
AND THAT THEY WOULD TRY VERY HARD TO REACH AGREEMENT
WITH MALAYSIA TO SOLVE HER PROBLEMS OUTSIDE OF THE LOS
CONTEXT. WE URGE YOU TO CONSULT WITH JAPAN (AND OTHER

MEMBERS OF THE GROUP OF FIVE) PRIOR TO MEETING WITH

MALAYSIA. WE WOULD ALSO NOTE OUR CONCERN WITH EXPLICIT PARALLELISM WITH THE ARTICLES ON INNOCENT PASSAGE. WE BELIEVE THAT THE EXISTING STRAITS ARTICLES MEET OUR MUTUAL SECURITY NEEDS AND THAT FURTHER NEGOTIATION CONCERNING THEM IS NOT DESIRABLE. CONSEQUENTLY, WE SHOULD MAKE EVERY EFFORT TO MEET MALAYSIAN CONCERNS OUTSIDE THE LOS CONFERENCE. WE BELIEVE THAT THE GENERAL APPROACH OF TRYING TO SOLVE THE MALAYSIAN PROBLEMS OUTSIDE THE LOS CONTEXT IS WISE. WE STRONGLY BELIEVE THAT IN FORTHCOMING DISCUSSIONS WITH MALAYSIA THEY SHOULD NOT BE ENCOURAGED TO EXPECT THAT WE WILL AGREE TO CHANGES IN THE STRAITS ARTICLES. IN THIS REGARD, NO COMMITMENTS REGARDING COSMETIC CHANGES SHOULD BE MADE. AT THE SAME TIME, IT WOULD BE MOST USEFUL TO REVIEW THE MALAYSIAN AMENDMENTS WITH THEM AND TO EXPLAIN THE REASONS WHY THEIR AMENDMENTS ARE EITHER UNNECESSARY OR UNDESIRABLE. WE WOULD WANT TO CONSIDER THE MALAYSIAN REACTION OVERALL BEFORE DECIDING ON THE ACCEPTABILITY OF COSMETIC CHANGES.

2) IN CONSIDERING THE PARTICULAR MALAYSIAN AMENDMENTS TO THE STRAITS ARTICLES WE SHOULD BE MINDFUL THAT MALAYSIA APPARENTLY ACCEPTS THE BASIC TRANSIT PASSAGE REGIME.

3) WE WOULD NOTE IN REGARD TO PARAGRAPH 3 OF THE U.K. PAPER THAT IN OUR VIEW THERE IS ADEQUATE AUTHORITY FOR INCLUDING UKC REGULATIONS UNDER ARTICLES 39 AND 40. WE WOULD NOTE WITH REGARD TO PARAGRAPH 5 THAT A CLEAR DIS-

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TINCTION MUST BE MADE BETWEEN THE MANDATORY AND VOLUNTARY NATURE OF ADVANCE APPLICATION.

4) ARTICLE 33(2). WE DO NOT BELIEVE THAT THE AMENDMENT TO THIS ARTICLE IS OF NO PRACTICAL EFFECT. RATHER, WE BELIEVE THAT THE AMENDMENT TO ARTICLE 33(2) MAY VERY WELL BE VIEWED AS INCORPORATING IN LARGE MEASURE THE INNOCENT PASSAGE ARTICLES INTO THE TRANSIT PASSAGE REGIME. THAT, OF COURSE, IS CONTRARY TO OUR VERY BASIC OBJECTIVE IN DEVELOPING UNIMPEDED TRANSIT AS A DIFFERENT REGIME ENTIRELY.

5) ARTICLE 37(3). THE AMENDMENT TO THIS ARTICLE APPEARS TO BE COSMETIC BUT WE AGREE THAT THE MALAYSIANS BE ASKED PRECISELY WHAT THEY INTEND TO ACHIEVE BY THAT AMENDMENT.

6) ARTICLE 38(2A). WE BELIEVE THE AMENDMENTS TO THIS ARTICLE SHOULD BE OPPOSED BECAUSE OF THE VERY GREAT DANGER

OF PARALLELISM BETWEEN THE INNOCENT PASSAGE AND THE TRANSIT PASSAGE REGIMES. WE FURTHER BELIEVE THAT THERE IS A DECIDED DANGER THAT ARGUABLY SATISFACTORY LISTS MAY

BE AMENDED OR EXTENDED, WHICH IS NOT IN OUR INTEREST. MOREOVER, WE BELIEVE THAT THE MALAYSIAN LIST IS, IN FACT, INCLUDED BY IMPLICATION IN THE ARTICLES. NEVERTHELESS, A PROVISION PROHIBITING SCIENTIFIC RESEARCH ALONG THE LINES CONTAINED IN THE ARCHIPELAGO CHAPTER MIGHT BE ACCEPTABLE.

7) ARTICLE 38(2B&C). WE SUPPORT QTE GENERALLY ACCEPTED UNQTE. WE WOULD NOTE THAT DIFFERENT TERMS ARE USED IN DIFFERENT ARTICLES IN PART II AS WELL AS IN PART III, WHICH ARE INTENDED TO HAVE THE SAME MEANING. WE WOULD ALSO INTEND THAT A SIGNIFICANT NUMBER OF STATES MAKE INTERPRETIVE STATEMENTS AT THE CONFIDENTIAL

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APPROPRIATE TIME THAT THE REGULATIONS ARE THOSE THAT EXIST AT ANY PARTICULAR TIME IN THE FUTURE--THE CONCEPT IS A DYNAMIC ONE. WE WOULD FAVOR MALAYSIA JOINING US IN THAT REGARD. SUCH A STATEMENT MIGHT IN OUR VIEW INCLUDE A REFERENCE TO THE 1973 IMCO CONVENTION.

8) ARTICLE 39(4). THIS AMENDMENT IS CLEARLY OF A SUBSTANTIVE NATURE. IT MAY BE USEFUL TO REMIND THE MALAYSIANS THAT UNDER THE RSNT PROVISION NO TRAFFIC SEPARATION SCHEME COULD BE ADOPTED BY IMCO IF A STRAITS STATE OBJECTED. MOREOVER, IT SHOULD BE POINTED OUT THAT IF THERE WERE AGREEMENT AMONG THE STRAITS STATES AND THE USER STATES THERE SHOULD BE NO REASON TO EXPECT THAT IMCO WOULD NOT APPROVE THE SCHEME. WE HAVE RESERVATIONS CONCERNING WILLINGNESS TO ACCEPT A RIGHT OF THE COASTAL STATE TO APPLY SEA LANES IN ADVANCE OF IMCO APPROVAL AND DO NOT BELIEVE THAT PROPOSALS ALONG THIS LINE SHOULD BE PURSUED. IN CONSIDERING THIS ISSUE, WE WOULD NOTE THAT A CLEAR DISTINCTION MUST BE MADE BETWEEN THE MANDATORY OR VOLUNTARY NATURE OF ADVANCE APPLICATION.

9) ARTICLE 40(1). WE ARE NOT CLEAR ON THE MEANING OF THE LAST SENTENCE OF PARAGRAPH 23 OF THE U.K. PAPER, ESPECIALLY BY THE REFERENCE TO QTE TAKE THEMSELVES OUT OF THE TRANSIT REGIME OR (EMPHASIS ADDED) BE CAUGHT BY THE RSNT ARTICLES ON THE TERRITORIAL SEA UNQTE. IN ADDITION, WE DO NOT BELIEVE THAT THE REFERENCE TO QTE PRESERVATION OF THE ENVIRONMENT UNQTE IS PROBABLY ACCEPTABLE. ONCE AGAIN, WE DO NOT BELIEVE THAT MALAYSIA SHOULD BE ENCOURAGED TO EXPECT ACCEPTANCE

OF THEIR AMENDMENTS.

10) ARTICLE 40A. WE BELIEVE THAT AN AMENDMENT

DEALING WITH THIS MATTER APART FROM ARTICLE 39 PROCEDU-
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RES HAS DANGEROUS CONSEQUENCES FOR STRAITS USERS.
MOREOVER, WE ARE AGAINST THE CREATION OF A NEW REGIME
FOR STRAITS WITH QTE SPECIAL PECULIARITIES UNQTE. THIS
OBVIOUSLY IS A SUBJECTIVE MATTER WHICH GRANTS WIDE
DISCRETION TO THE COASTAL STATE. WE BELIEVE THAT THERE
IS ADEQUATE AUTHORITY FOR INCLUDING UKC REGULATIONS
UNDER ARTICLES 39 AND 40 AND ARE PREPARED TO MAKE
A PUBLIC STATEMENT AT THE APPROPRIATE TIME.

11) ARTICLE 41. WE BELIEVE THAT THE MALAYSIAN AMEND-
MENTS FUNDAMENTALLY AFFECT THE STRAITS REGIME. IF IT
IS DEEMED NECESSARY TO GIVE SOME KIND OF SATISFACTION
UNDER THIS ARTICLE, THE BEST WAY TO DO SO WOULD BE TO
STRENGTHEN THE OBLIGATION TO COOPERATE IN PARAGRAPH 1
BY REPLACING THE WORD QTE SHOULD UNQTE BY THE WORD
QTE SHALL UNQTE.

12) ARTICLE 41A. THIS PROPOSAL IS OF A SUBS-
TANTIVE NATURE AND THE FOLLOWING POINTS SHOULD BE MADE
IN OPPOSITION:

--THE LOS TREATY IS NOT THE RIGHT PLACE FOR SUCH A
PROVISION.

--DEVELOPING COUNTRIES WHICH ARE TRYING TO BUILD UP
A FLEET WOULD BE OPPOSED TO THE ARTICLE.

--NO UNILATERAL REGULATION BY A COASTAL STATE COULD

BE ACCEPTED IN THIS MANNER.

--TO THE EXTENT A GENERAL PRACTICE EMERGED ON INTER-
NATIONAL CIVIL LIABILITY, STRAIT STATES WOULD BE
PROTECTED. UNQTE.

2. MR. OXMAN (L/OES) IS SCHEDULED TO MEET WITH AMBASSA-
DOR LOGAN AT FCO MIDDAY MONDAY 10 JANUARY AND WOULD
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WELCOME PARTICIPATION OF EMBASSY LOS OFFICER.

3. PLEASE MAKE HOTEL RESERVATION AT EUROPA NIGHTS 8
AND 9 JANUARY. OXMAN WOULD HOPE TO COMPLETE TALKS IN
TIME TO DEPART LATE AFTERNOON 10 JANUARY.
KISSINGER

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